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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,097	01/27/2004	John Terrell Rickard	LMORIN1260-1	3201

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DLA PIPER RUDNICK GRAY CARY US, LLP
4365 EXECUTIVE DRIVE, SUITE 1100
SAN DIEGO, CA 92121-2133

EXAMINER

ELDRED, JOHN W

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,097

Applicant(s)

RICKARD, JOHN TERRELL

Examiner

J. Woodrow Eldred

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campillo et al (H1522) in view of Kirkpatrick (6,738,012).

Campillo et al disclose a countermeasure missile defense system comprising substantially all claimed steps or elements, including a dispenser to dispense a substance (i.e. an aerosol or particles) into an attack envelope, a laser to illuminate the substance with a first frequency and cause the substance to radiate at a second frequency, and inherently a means for the detection of an attack and the control of the defense system. See especially column 2, line 61 – column 4, line 49. Campillo et al fail to show the defense system being used to defend an aircraft or the particular sensor means for tracking the attacking missile. Kirkpatrick teaches that it is well known to use infrared defense systems to protect aircraft from missile attack, as well as showing the use of visual, radar and laser means for tracking the missile. Kirkpatrick also teaches the coordination between a ground station and the aircraft based elements, such as required for the limitation that the exciter laser be ground-based. See especially column 1, line 57-column 2, line 10; and column 3, line 65-column 4, line 3. Motivation to combine is the mere substitution of the system from the defense of one type of target to the defense of another known type of target and the use of particular sensor systems in place of unspecified systems. To employ the teachings of Kirkpatrick on the defense system of Campillo et al and have the system defend an aircraft is considered to have been obvious to one having ordinary skill in the art.

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3. Applicant's arguments filed 2-14-05 have been fully considered but they are not persuasive. The argument that one of ordinary skill would not be motivated to combine the defense system of Campillo et al with Kirkpatrick to defend an aircraft is not considered persuasive because the same type of infrared-seeking missile is being defended against in each case. The argument that different characteristics are involved is not considered persuasive because, in the first place, any particular thermal or spatial parameters are not claimed, and, in the second place, it is believed that the defense system could be applied to at least some aircraft without any substantial modification or undue experimentation.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

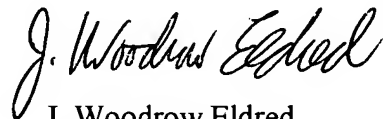
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Woodrow Eldred whose telephone number is 571-273-6901. The examiner can normally be reached on Monday to Thursday, from 8:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "J. Woodrow Eldred". The signature is written in a cursive, flowing style.

J. Woodrow Eldred
Primary Examiner
Art Unit 3644

JWE